

REMARKS

Applicants respectfully request reconsideration of the presently pending rejection of this application as examined pursuant to the office action of January 9, 2008. In the office action, Claims 1-5, 8-15, 28-30 and 32-41 were examined. Those claims remain pending.

Claims 1-5, 8-15, 28-30 and 32-41 were rejected in the pending office action under 35 USC § 103(a) as being unpatentable over the combination of published PCT application to Huff et al., WIPO Publication No. WO99/57625 ("Huff") and US published patent application Publication No. 2004/0215972 to Sung et al.

Applicants note that it is their understanding that the Declaration Caseiro and the second Declaration of Graham have been entered in the file. Nevertheless, in the event they have not, Applicants hereby request that they be entered and considered, along with the remarks submitted accompanying those declarations.

The 35 USC § 103(a) rejection

Claims 1-5, 8-15, 28-30 and 32-41 were rejected as being unpatentable over Huff in view of Sung. The Sung reference has been cited for the specific asserted purpose of allegedly teaching the use of intelligent agents selectively distributed among network nodes, but not all nodes. It was stated in the May 23, 2008, advisory action that the 37 C.F. R. § 1.131 affidavits submitted in the October 29, 2007, and May 8, 2008, responses to office action as filed by the Applicants were ineffective to predate the Sung reference. Specifically, it was stated that the affidavits did not place the application in condition for allowance because the October 25, 2007, Declaration of Townsend did not address March 2003 diligence. It was also stated that the Declaration did not state that the acts relied upon to establish a prior date of invention were carried out in this country or in a NAFTA or WTO member country. In response, Applicants submit herewith a supplemental declaration from inventor Townsend describing acts carried out in this country, including with respect to March 2003, in regard to the subject invention.

The Sung Reference Should Be Withdrawn From Consideration

Applicants respectfully submit that the Sung reference should be withdrawn from consideration. The first filed Declarations of co-inventors Richard Graham and Mark Townsend describe the Applicants' conception and diligent steps to reduce their invention to practice,

except with respect to March 2003, which actions began prior to the filing date of the Sung reference. Specifically, the Applicants conceived the invention prior to the April 13, 2003, Sung application filing date. They worked diligently to produce the invention at least as of July 28, 2003. Graham's and Townsend's first declarations were fully supported by exhibits generated contemporaneously with the efforts to reduce the invention to practice. Applicants specifically note that Townsend's original Declaration, at paragraph 5, describes actions occurring between February 28, 2003, and April 15, 2003. The April 15, 2003, date was supported by Exhibit C attached to the first Townsend Declaration. Clearly, with Townsend's original Declaration and the accompanying Exhibit C, it can be fairly concluded that the Applicants conceived of the present invention prior to April 13, 2003. Their subsequent actions represent sufficient diligence in reducing the invention to practice.

Applicants further submit herewith the second Declaration of Townsend to make clear that: 1) the activity conducted as described in his first declaration was carried out in the United States; and 2) work continued through March 2003 on the development of the invention, albeit at a slower pace than occurred after April 15, 2003. Applicants respectfully submit that there was no lapse during the critical period of development of the invention. They also submit that any inactivity or reduced activity that may have occurred is fairly excused under the circumstances. Specifically, as Townsend states, there is a record of an exchange with another Enterasys employee regarding one aspect of the invention under consideration. The March 3, 2003, email exchange identified in the second Townsend declaration, describes the issue of identifying the location of an intrusion source for the purpose of identifying a network entry device to be modified. Further, as Townsend states, in the March 2003 period, his employer was in a period of significant financial uncertainty. As a result, there was a particular focus to direct all employees' attention on immediate revenue generation. March 2003 was the last month of the first fiscal quarter for the company immediately following a fiscal year that was very weak. Townsend, as a sales engineer, was directed to focus his attention on making sales rather than spending his time on the development of this invention. While he continued to work with others on the initial coding for the invention, his time in March 2003 for doing so was limited. Townsend has already alluded to this limitation in paragraph 3 of his first declaration.

First, Applicants respectfully suggest that there was no lapse in activity in March 2003. Second, any reduction in activity was excusable. Specifically, Townsend and his co-inventors

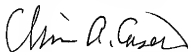
were focused on their existing regular employment obligations during March 2003. The courts have made clear that an inventor need not abandon his regular employment to ensure that reasonable diligence has been established in the course of working to reduce an invention to practice. See, e.g., *Gould v. Schawlow*, 363 F.2d 908, 919 (CCPA 1966), *Gould v. General Photonics Corp.*, 534 F. Supp. (N. D. Calif. 1982), and *Harper v. Zimmerman*, 41 F.2d 261, 268 (D. Del. 1930). In this case, Townsend, as an originator of the concept of the present invention, and others working with him, were obliged to focus their energies on the current financial condition of their employer. Beyond that, they worked as much as they reasonably could on the development of the invention, as described by Townsend in his supplemental declaration accompanying this communication. Applicants respectfully submit that they should not be penalized for performing in a manner well established to be permissible without loss of a determination that they remained diligent in reducing the present invention to practice.

In view of the previously submitted Declarations of Richard Graham, Mark Townsend and Chris Caseiro, the attachments to those Declarations and the accompanying second Declaration of Mark Townsend, Applicants respectfully suggest that the Sung reference is inapplicable in the determination of the patentability of the present invention described in pending Claims 1-5, 8-15, 28-30 and 32-41. Withdrawal of the 35 USC § 103(a) rejection of the claims based on Huff in view of Sung is therefore requested.

CONCLUSION

In view of the remarks made herein and the accompanying declarations, Applicants respectfully suggest that the rejection under 35 § 103(a) have been successfully traversed. Allowance of pending Claims 1-5, 8-15, and 28-30 and 32-41 is therefore requested.

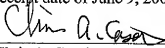
Respectfully submitted,



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Certificate of Transmission

I hereby certify that this correspondence is being transmitted to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, using the EFS-Web service of the US Patent Office on June 9, 2008. It is hereby requested that this communication be assigned a receipt date of June 9, 2008.



Chris A. Cascio